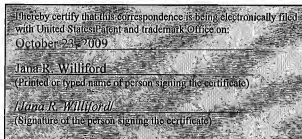


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Brian J. Petryna
Serial No.: 09/940,783
Filed: August 28, 2001
Title: SYSTEM AND METHOD FOR AUTOMATICALLY ESTABLISHING
A TELEPHONE CALL OVER A COMPUTER NETWORK
Grp./A.U.: 2419
Examiner: Andrew Chung Cheung Lee
Confirmation No.: 3916

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Mail Stop Appeal Brief-Patents

ATTENTION: Board of Patent Appeals and Interferences

Sirs:

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This is an appeal from a Final Rejection dated February 5, 2009, of Claims 1-21. The Appellant submits this Brief with the statutory fee of \$540.00 as set forth in 37 C.F.R. § 41.20(b)(2), and hereby authorize the Commissioner to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 08-2395.

This Brief contains these items under the following headings, and in the order set forth below in accordance with 37 C.F.R. §41.37(c)(1):

- i) REAL PARTY IN INTEREST
- ii) RELATED APPEALS AND INTERFERENCES
- iii) STATUS OF CLAIMS
- iv) STATUS OF AMENDMENTS
- v) SUMMARY OF CLAIMED SUBJECT MATTER
- vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- vii) APPELLANTS' ARGUMENTS
- viii) APPENDIX A – CLAIMS
- ix) APPENDIX B – EVIDENCE
- x) RELATED PROCEEDINGS APPENDIX

i) REAL PARTY IN INTEREST

The real party in interest in this appeal is Agere Systems Inc.

ii) RELATED APPEALS AND INTERFERENCES

Appellant does not know of any prior and pending Appeals, Interferences, or Judicial Proceedings directly related to, affecting, affected by, or have a bearing on the Board's decision in this appeal.

iii) STATUS OF THE CLAIMS

Claims 1-21 are rejected.

Herein, all rejections of Claims 1-21 are being appealed.

iv) STATUS OF THE AMENDMENTS

No amendments have been made in response to the Office Action of February 5, 2009 (hereinafter "Office Action") and no amendments are pending.

v) SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 relates a system for automatically initiating a subsequent telephone call over a computer network 160 from a second caller to a first caller. The system comprises an address interceptor 140 and a network call initiator for the second caller. The address interceptor 140 is associated with a circuit-switched telephone network 120 and receives calling number identification signals of the first caller from a first telephone call from the first caller to the second caller over the circuit-switched telephone network 120. The address interceptor 140 extracts from the received

calling number identification signals a destination address of a computer system 130 of the first caller for the subsequent telephone call from the second caller's computer system 150 back to the first caller. The network call initiator is coupled to the address interceptor 140. The network call initiator employs the destination address of the first caller's computer system 130 to automatically initiate the subsequent telephone call to the destination address of the first caller via the second caller's computer system 150 over the computer network 160. (*See, e.g.*, line 2 of page 8 through line 4 of page 10 and Fig. 1 of the original specification.)

Independent Claim 8 relates to a method of automatically initiating a subsequent telephone call over a computer network from a second caller to a first caller. The method comprises extracting a destination address of the first caller 430 and automatically initiating the subsequent telephone call 450 employing the destination address using a computer network to which both the first caller and second caller are connected to. The method extracts the destination address of the first caller from calling number identification signals received 410 from a first telephone call from the first caller to the second caller over a circuit-switched telephone network. Once the second caller has received the calling number identification signals from the first caller it then extracts the destination address of the first caller from the received calling number identification signals. (*See, e.g.*, line 6 of page 13 through line 17 of page 14 and Fig. 4 of the original specification.)

Independent Claim 15 relates to a computer 210 which includes a processor 212; a memory 213, display 220, and at least one input 222/224 coupled to the processor; a circuit-switched telephone network interface 214 coupled to the processor 212; a computer network interface 216 coupled to the processor 212; an address interceptor 215 coupled to the processor 212 and circuit-switched telephone network interface 214; and a network call initiator 217 coupled to the processor 212. The circuit-switched telephone network interface 214 receives a first telephone call from a first

caller over circuit-switched telephone network 230 that is coupled to the circuit-switched telephone network interface 214. The first telephone call includes calling number identification signals of the first caller. Address interceptor 215 extracts a destination address of the first caller from the calling number identification signals received by the circuit-switched telephone network interface 214. Network call initiator 216 uses the extracted destination address of the first caller and automatically initiates a subsequent telephone call to the first caller via computer network 240 to which the computer network interface 216 is coupled. (See, e.g., line 5 of page 10 through line 19 of page 11 and Fig. 2 of the original specification.)

vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Whether Claims 1-2, 7-9, 14-16, and 21 are novel under 35 U.S.C. §102(e) over U.S. Patent No. 6,215,784 to Petras, *et al.* (hereinafter “Petras”) as applied in the Office Action at pages 2-4 and 12-13.

(B) Whether Claims 1-21 are obvious over the combination of U.S. Patent No. 6,760,324 to Scott, *et al.* (hereinafter “Scott”) and Petras as applied in the Office Action at pages 4-8 and 13-14.

(C) Whether Claims 1-21 are obvious over the combination of Scott and U.S. Patent No. 7,110,395 to Blair (hereinafter “Blair”) as applied in the Office Action at pages 8-12 and 14-15.

vii) APPELLANTS' ARGUMENT

- (A) In Grounds of Rejection (A), the novelty rejection of Claims 1-2, 7-9, 14-16, and 21 are improper.**

Claims 1, 8, and 15

- (1) The novelty rejection is improper because it relies on Petras to teach features that are not taught in the cited portions of Petras.**

At the top of page 13 in the Office Action the Examiner states:

Examiner interpreted extracting a destination address for a subsequent telephone call from calling number identification signals received from a first telephone call over a circuit-switched telephone network from a first caller to a second caller as *"the off-hook condition.....PBX is programmed to automatically dial a number assigned to the CTI hardware....."; see reference Petras: Fig. 3, col. 7, lines 9-16 and "CTI server extracts the telephone numberCalling Line Identification.."; col. 7, lines 16-40, col. 8, lines 31-41;* and interpreted employs said destination address of said first caller to automatically initiate said subsequent telephone call to said destination address via said computer network terminal as *"instructs the CTI hardware to dial the number 1234567 which is a number for the called party telephone, see reference Petras, Fig. 3, col. 8, lines 31-52.*

The cited portions of Petras teach that when a subscriber 32 wants to call the telephone 58 of a sender of a received e-mail, the subscriber 32 places a telephone 34 off-hook. The PBX 49 the telephone 34 is connected to automatically dials a number assigned to a CTI server 40 outside PSTN 14, which extracts the telephone number of telephone 34 (the telephone of the subscriber 32 using the CTI server service) and passes that number to a warm-line server 38. The warm-line server 38 uses the extracted telephone number of the subscriber passed on by the CTI server 40 to retrieve a current IP address of the subscriber 32, formulate a data message, and send the data message to the IP address of a PC 36 of the subscriber 32. A warm-line enabled application on the subscriber's PC 36 then sends the e-mail address of the sender of the received e-mail back to the warm-line server 38 which, in turn, uses a directory service 45 to translate the e-mail address to a telephone number. The warm-line server 38 then requests the CTI server 40 to call the number. The CTI server 40 then

connects the telephone 58 of the sender of the e-mail with the subscriber's 32 telephone 34 over the PSTN.

As such, the cited portions of Petras, as relied upon by the Examiner, do not teach or suggest extracting a destination address for a subsequent telephone call from calling number identification signals received from a first telephone call over a circuit-switched telephone network as recited in independent Claims 1, 8, and 15, but rather extracting a telephone number from a directory service derived from an e-mail. Furthermore, the cited portions of Petras relied upon by the Examiner do not teach or suggest employing the destination address to automatically initiate the subsequent call to the destination address via a computer network as recited in Claim 1, but rather employing the telephone number to automatically initiate the subsequent call over the circuit-switched PSTN.

For at least these reasons, the cited portions of Petras do not anticipate pending independent Claim 1 and, therefore, the rejection is improper.

Claims 2, 7, 9, 14, 16 and 21

Claims 2, 7, 9, 14, 16 and 21 are novel over Petras, as applied by the Office Action, at least, by their dependence on independent Claim 1

(B) In Grounds of Rejection (B), the obviousness rejection of Claims 1-21 is improper.

Claims 1, 8, and 15

(1) The obvious rejection is improper because it relies on Petras to teach features that are not taught in the cited portions of Petras.

At the top of page 6 in the Office Action the Examiner states:

"Scott et al. do not disclose explicitly extracts from said calling number identification signals a destination address of said first caller for said subsequent telephone call from said second caller to said first caller.

Petras et al. teach the limitation of extract from said calling number identification signals a destination address of said first caller for said subsequent telephone call from said second caller to said first caller...

Here the Examiner recognizes that Scott does not disclose extracting from calling number identification signals a destination address of a first caller for a subsequent telephone call from a second caller to the first caller and cites the same portions of Petras used in the above noted novelty rejection in section (A)(1) to cure this deficiency of Scott. However, as established in section (A)(1) above, Petras does not teach or suggest extracting a destination address for a subsequent call over a computer network from calling number identification signals received. As such, Petras does not cure the recognized deficiency of Scott. For at least that reason, the Office Action has not provided a *prima facie* case of obviousness for pending independent Claims 1, 8, and 15.

Claims 2-7, 9-14, and 16-21

Claims 2-7, 9-14, and 16-21 are non-obvious over the combination of Scott and Petras, as applied by the Office Action, at least, by their dependence on independent Claims 1, 8, and 15

(C) In Grounds of Rejection (C), the obviousness rejection of Claims 1-21 is improper.

Claims 1, 8, and 15

(1) The obvious rejection is improper because it relies on Blair to teach features that are not taught in the cited portions of Blair.

At the bottom of page 9 and the top of page 10 in the Office Action the Examiner states:

Scott et al. do not disclose explicitly extracting from said calling number identification signals a destination address of said first caller for said subsequent telephone call from said second caller to said first caller.

Blair discloses extracting from said calling number identification signals a destination address of said first caller for said subsequent telephone call from said second caller to said first caller (*Fig. 2, Abstract, lines 1-17, col. 2, lines 42-60*).

Furthermore, at the top of page 15 in the Office Action the Examiner asserts:

...Examiner interpreted extracting a destination address for a subsequent telephone call initiated over a computer network from a second caller to a first caller as "a call identifier will be sent along with the call signal, caller ID"...

Line 37 of column 2 through line 2 of column 3 of Blair states:

A user desires to make a network call. The user picks up the origination phone 10 and places an origination call to the destination phone 12.... The origination call will go through the PSTN to the destination phone. As part of the call, a call identifier will be sent along with the call signal. An example of call identifier is caller ID, available in many residential areas.

The destination phone 12 receives the call identifier prior to the call being completed, indicated by alerting or ringing the user at the destination, and rejects the call. The destination phone recognizes the call identifier as coming from a phone that can connect over a data network, such as IP, FR or ATM. The rejected call signal is returned to the origination phone 10. While the rejected call signal is being sent to the origination phone 10, the destination phone places a call to a network service provider. When the origination phone 10 receives the rejected call signal, it also places a call to a network service provider.

...Once both of the phones are connected to the same server or site, they discover the network address of each other. When each phone knows the addresses, data packets are sent directly to each phone across the network.

Thus, the cited portions of Blair teach that once both phones are connected to a same server or site, they discover network addresses of each other and when each phone knows the addresses, data packets are sent directly to each phone across a network. Blair does not teach the call identifier is employed to make the subsequent call, but rather that the discovered network address is employed to make the subsequent call. Thus, the cited portions of Blair as applied by the Examiner do not cure the noted deficiencies of Scott. For at least that reason, the Office Action has not provided a *prima facie* case of obviousness for pending independent Claims 1, 8, and 15.

Claims 2-7, 9-14, and 16-21

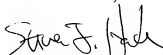
Claims 2-7, 9-14, and 16-21 are non-obvious over the combination of Scott and Blair, as applied by the Office Action, at least, by their dependence on independent Claims 1, 8, and 15

CONCLUSIONS

For the reasons set forth above, Appellant respectfully submits that Claims 1-2, 7-9, 14-16, and 21 are not anticipated by Petras. Appellant further respectfully submits that Claims 1-21 are patentably nonobvious over both the combined teaching of Scott and Petras and the combined teaching of Scott and Blair. Accordingly, the Appellant respectfully requests that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of all of the Appellant's pending claims.

Respectfully submitted,

HITT GAINES, P.C.

A handwritten signature in black ink, appearing to read "Steve J. Hanke", written over the printed name.

Steven J. Hanke
Registration No. 58,076

Dated: October 23, 2009

Hitt Gaines, PC
P. O. Box 832570
Richardson, Texas 75083-2570
(972) 480-8800
(972) 480-8865 (Fax)
steve.hanke@hittgaines.com

viii) APPENDIX A – CLAIMS

1. (Previously Presented) A system for automatically initiating a subsequent telephone call over a computer network from a second caller to a first caller, comprising:

an address interceptor, associated with a station of a circuit-switched telephone network, that receives calling number identification signals of said first caller from a first telephone call from said first caller to said second caller over said circuit-switched telephone network and extracts from said calling number identification signals a destination address of said first caller for said subsequent telephone call from said second caller to said first caller; and

a network call initiator, coupled to said address interceptor and associated with a computer network terminal, that employs said destination address of said first caller to automatically initiate said subsequent telephone call to said destination address via said computer network terminal.

2. (Original) The system as recited in Claim 1 wherein said calling number identification signals and said destination address are associated with a single location.

3. (Original) The system as recited in Claim 1 wherein said destination address is selected from the group consisting of:

a telephone number,

an Internet Protocol address,

a Voice over Internet Protocol (VoIP) gateway address, and

a VoIP gateway address combined with a telephone number.

4. (Original) The system as recited in Claim 1 wherein said computer network is the Internet.

5. (Original) The system as recited in Claim 1 wherein said station leaves unanswered a call transmitting said calling number identification signals.

6. (Original) The system as recited in Claim 1 wherein said calling number identification signals are associated with a second station, said second station hanging up after a predetermined number of unanswered rings.

7. (Original) The system as recited in Claim 1 wherein said station and said computer network terminal are embodied in a computer and wherein a single telephone line alternatively couples said station to said circuit-switched telephone network and said computer network terminal to said computer network.

8. (Previously Presented) A method of automatically initiating a subsequent telephone call over a computer network from a second caller to a first caller, comprising:

extracting a destination address for said subsequent telephone call from calling number identification signals received from a first telephone call over a circuit-switched telephone network from said first caller to said second caller; and

employing said destination address of said first caller to automatically initiate said subsequent telephone call to said destination address via said computer network.

9. (Original) The method as recited in Claim 8 wherein said calling number identification signals and said destination address are associated with a single location.

10. (Original) The method as recited in Claim 8 wherein said destination address is selected from the group consisting of:

a telephone number,
an Internet Protocol address,
a Voice over Internet Protocol (VoIP) gateway address, and
a VoIP gateway address combined with a telephone number.

11. (Original) The method as recited in Claim 8 wherein said computer network is the Internet.

12. (Original) The method as recited in Claim 8 further comprising leaving unanswered a call transmitting said calling number identification signals.

13. (Original) The method as recited in Claim 8 wherein said calling number identification signals are associated with a station, said method further comprising hanging up said station after a predetermined number of unanswered rings.

14. (Original) The method as recited in Claim 8 wherein said method is carried out in a computer and wherein a single telephone line alternatively carries said calling number identification signals and said destination address.

15. (Previously Presented) A computer, comprising:
a processor;
a memory coupled to said processor;
a display coupled to said processor;
at least one input device coupled to said processor;
a circuit-switched telephone network interface, coupled to said processor, for receiving a first

telephone call from a first caller over a circuit-switched telephone network couplable thereto, said first telephone call including calling number identification signals;

a computer network interface, coupled to said processor, for allowing said computer to communicate over a computer network;

an address interceptor, coupled to said processor and communicable with said circuit-switched telephone network interface, for extracting a destination address of said first caller for a subsequent telephone call to said first caller from said calling number identification signals; and

a network call initiator, coupled to said processor, for employing said destination address of said first caller to automatically initiate said subsequent telephone call to said destination address of said first caller via said computer network interface.

16. (Original) The computer as recited in Claim 15 wherein said calling number identification signals and said destination address are associated with a single location.

17. (Original) The computer as recited in Claim 15 wherein said destination address is selected from the group consisting of:

a telephone number,

an Internet Protocol address,

a Voice over Internet Protocol (VoIP) gateway address, and

a VoIP gateway address combined with a telephone number.

18. (Original) The computer as recited in Claim 15 wherein said computer network is the Internet.

19. (Original) The computer as recited in Claim 15 wherein said circuit-switched telephone

network interface leaves said call unanswered.

20. (Original) The computer as recited in Claim 15 wherein a station placing said call hangs up after a predetermined number of unanswered rings.

21. (Original) The computer as recited in Claim 15 wherein said circuit-switched telephone network interface and said computer network interface are coupled to a single telephone line.

ix) APPENDIX B – EVIDENCE

The evidence in this appendix includes U.S. Patents to Petras, *et al.*, Scott, *et al.*, and Blair. Scott was entered in the record by the Examiner in the Office Action of April 28, 2005. Petras and Blair were entered in the record by the Examiner in Office Action of July 22, 2008.

x) RELATED PROCEEDINGS APPENDIX

NONE